

HOUSE BILL 745

By Windle

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 6; Title 8, Chapter 50; Title 40; Title 41; Title 50 and Title 62, relative to employers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 6, is amended by adding the following language as a new section:

4-3-612.

(a) As used in this section:

(1) "Lie detector test" means a polygraph, voice stress analyzer, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual;

(2) "Polygraph" means an instrument that records continuously, visually, permanently, and simultaneously any changes in cardiovascular, respiratory, and electrodermal patterns and is used to render a diagnostic opinion as to the honesty or dishonesty of an individual; and

(3) "Voice stress analyzer" means an instrument that records both mental and physical stress responses that are present in human voice, when a person suffers psychological stress in response to a question.

(b) The department of correction shall not:

(1) Directly or indirectly, require, request, suggest, or cause an employee or prospective employee to take or submit to any lie detector test;

(2) Use, accept, refer to, or inquire about the results of any lie detector test of an employee or prospective employee; or

(3) Discharge, discipline, discriminate against in any manner, deny employment or promotion, or threaten to take any such action against an employee or prospective employee for refusal to take a lie detector test, on the basis of the results of such a test, for filing a complaint or for testifying in any proceeding.

(c) If the department is found to be in violation of subsection (b), the employee or prospective employee shall have standing to bring a claim.

(d) Subsection (b) shall not apply under the following circumstances:

(1) The department may request an employee or prospective employee to submit to a lie detector test if:

(A) The test is administered pursuant to § 41-1-102(d);

(B) The test is administered in connection with an ongoing investigation involving economic loss or injury to the department, including theft, embezzlement, or misappropriation;

(C) The employee had access to the property that is the subject of the investigation;

(D) The department has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(E) The department provides to the employee, before the examination, a written statement that:

(i) Sets forth with particularity the specific incident or activity being investigated;

(ii) Is signed by the department or an agent of the department;

(iii) Is retained by the department for at least three (3) years; and

(iv) Contains an identification of the specific economic loss or injury to the business, a statement indicating that the employee had access to the property and a statement describing the basis of the department's reasonable suspicion that the employee was involved in the incident;

(2) The use of the lie detector test on prospective employees who are employed to protect facilities, materials, or operations having a significant impact on the health or safety of this state or any political subdivision of this state;

(e) The exemptions provided in subsection (d) are applicable only if:

(1) The lie detector test is administered by a person who holds a valid license as a polygraphic examiner or intern or is qualified as a polygraphic examiner pursuant to § 62-27-106; and

(2) The results of a lie detector test or the refusal to take the test is not used as the sole basis upon which an adverse employment action is taken against an employee or prospective employee.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.